85-818 (1)

NO:

Supreme Court, U.S.
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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

On Writ of Certiorari to the District Court of Appeal of Florida for the Third District

PETITION FOR WRIT OF CERTIORARI

LISA BENNETT
Counsel for Petitioners
304 Palermo Avenue
Coral Gables,
Florida, 33134
(305) 444-5925

94pp

No._____

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SUPREME COURT OF THE UNITED STATES
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

A. QUESTION PRESENTED FOR REVIEW

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a state court from rejecting decisions of the highest governing body of a church on questions of church doctrine, law, and the control of church property, by requiring and upholding an election to resolve the dispute by majority rule, where the church, though governed within the

congregation, is part of a body of churches which subscribe to a form of church government which vests authority in certain church officers and prohibits the resolution of disputes by voting.

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D. OPINIONS BELOW

The final opinion of the District Court of Appeal of Florida for the Third District, the order herein sought to be reviewed, is reported as Black v. Wyche, 472 So.2d 1195 (Fla. 3rd DCA 1985). (App. 17-18).1/ The opinion of the District Court of Appeal, Third District, entered in a prior appeal from a non-final order entered in this case is reported as Black v. Wyche, 440 So.2d 364 (Fla. 3rd DCA 1983). (App.10-11).

The opinion of this Court denying jurisdiction to review the order of the District Court affirming the non-final order referred to above is reported as Williams v. Wyche, 104 S.Ct. 2145 (1984). (App.12).

1/ Reference to the Appendix to the Petition for Certiorari is by the abbreviation "App." followed by the page number.

E. STATEMENT ON JURISDICTION

The judgment sought to be reviewed is an opinion of the District Court of Appeal of Florida for the Third District which was rendered June 11, 1985. (App.17-18). No motion for rehearing was filed. On September 9, 1985, petitioners filed an application for extension of time within which to petition for certiorari. The application was granted by an order of this Court extending the time to file the petition to and including November 11, 1985. (App.13).

The decision of the District Court was without written opinion. Pursuant to Florida law such decisions are not subject to review by the Supreme Court of Florida. Article V, Section 3(b)(3), Florida Constitution; Rule 9.030(a)(2)(A), Florida Rules of Appellate Procedure. The District Court

is, therefore, the state court of last resort in the instant case. This Court has jurisdiction, pursuant to Title 28 U.S.C. Section 1257(3), to review the opinion entered by the District Court, in that said opinion violates certain titles, rights, privileges or immunities guaranteed to the petitioners under the Constitution of the United States.

The opinion of the District Court infringes on the rights and privileges guaranteed to the petitioners by the First and Fourteenth Amendments to the United States Constitution, in that said opinion violates the constitutional bar against the establishment of religion and the guarantee of the free excercise of religion. The opinion of the District Court resolved a dispute over the control of church property and leadership of a congregation in contravention of decisions

of the highest body of church

govenrment .

F. CONSTITUTIONAL PROVISIONS

The case at bar involves the

following constitutional provisions:

" Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof;..." Amendement I, United States Constitution.

"... nor shall any State deprive any person of like, liberty, or property, without due process of law;...". Amendment XIV, Section 1, United States Constitution.

G. STATEMENT OF THE CASE

The case arose on filing of the petitioners' verified complaint seeking injunctive relief, a declaratory judgment and damages. (App.19-39). The complaint contained the following allegations:

Petitioners were elders of the Liberty City Church of Christ and had held that position for thirty years. As elders they had authority, according to tenet of the Church to appoint a minister. The petitioners appointed the respondent as minister upon an oral agreement. After determining that the respondent was not performing his duties satisfactorily, the petitioners terminated the respondent's employment as minister in accordance with the oral contract. (App.19-39).

At a meeting of church members, the respondent then called for a

vote, contrary to the prohibition against voting in the Church, which expelled the petitioners as elders of the Church and established himself as minister. The respondent then changed the locks on the Church buildings and proceeded to exercise custody and control over various real and personal properties belonging to the Liberty City Church of Christ. (App.19-39).

The petitioners, as elders of the Church, had the authority to exercise control over Church property and handle the finances of the Church. (App. 19-39). The respondent counterclaimed seeking certain Church funds in the custody of the petitioners.

A hearing was held on the parties cross motions for injunctive relief. No sworn testimony was taken at the hearing.

Despite the argument of petitioners' counsel that voting was prohibited in the Church, the trial court ordered an election to determine who was to hold the positions of minister and elders. The court also ordered Church funds in the control of the petitioners to be turned over to the respondent. (App. 6-9).

The non-final order of the trial court was appealed to the District Court. The District Court affirmed the trial court's order without opinion. (App.10-11).

The petitioners then sought review in this Court on the grounds that the District Court's order, affirming the trial court, violated the petitioners' First Amendment rights to religious freedom. This federal question, however, was not raised before the District Court. This Court denied jurisdiction. (App.12).

The court ordered election was held and the respondent was elected as minister and the petitioners were ousted as elders of the Church.

The respondent moved for summary judgment. In opposition to the motion for summary judgment the petioners filed several affidavits attesting to the prohibition against voting in the Church of Christ and to the fact that the elders are the highest ecclesiastical authority in the Church of Christ. (App.40-54). The petitioners also filed a copy of the deed to the Church land which was given to the petitioners in trust for the Church of Christ. (App.55-56).

The petitioners, in their cross motion for summary judgment and memorandum of law in opposition to the respondent's motion for summary judgment raised the federal question now asserted

before this Court. (App.57-60).

A hearing was held on the motion for summary judgment. No testimony was taken at the hearing. At the hearing, counsel for the petitioners argued that the court had no authority to order an election to select the minister where voting was prohibited in the Church and where the elders of the Church were the highest ecclesiastical authority and they had removed the minister. (App.1-5).

Counsel for the respondent argued that the issue had already been determined, by the District Court and this Court, adversly to the petitioners. (App.1-5). The trial court agreed with the respondent yet considered the issue and specifically stated that the court would again rule on the issue. (App.1-5).

In fact, the federal question was not raised before the District Court in the first appeal. Only isues of state law were raised in that appeal. The petitioners did raise the federal question before this Court in their styled "appeal" from the District Court's order. This Court, however, lacked jurisdiction to consider the question as it had not been raised in the lower court.

The federal question asserted in this petition was clearly raised in the trial court, where it was considered by the trial judge at the motion for summary judgment. (App.1-5). The federal question was also clearly raised in, and considered by, the District Court. (App.61-62).

The trial court entered final summary judgment for the respondent.

(App.14-16). The petitioners appealed to the District Court which affrimed without opinion. (App.17-18). It is this order for which the petitioners seek review.

H. REASONS FOR GRANTING WRIT OF CERTIORARI

Since Watson v. Jones, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1872), this Court has recognized the principle that the role of the civil courts in resolving property disputes involving internal ecclesiastical dissension is severely circumscribed. Watson v. Jones, supra, was decided before the First Amendment was made applicable to the States, but it has been recognized as reflecting the values of the First Amendment religion clauses and its principles have been strengthened by subsequent decisions of this Court.

The principle which holds that the First Amendment religion clauses, and

their application to the States through the Fourteenth Amendment, require civil courts to accept decisions of the highest orgaization of hierarchial polity on matters of discipline, faith, internal organization or ecclesiastical custom or law has been recognized by this Court since Watson v. Jones, supra, in the following cases: Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1920); Kedroff v. St. Nicholas Cathedral of Russian O. Ch., 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed. 2d 1140 (1960); Presbyterian Ch. v. Mary E. B. Hull Mem. Pres. Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); Serbian Eastern orthodox Diocese, Etc. v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); and

Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

Hierarchical churches have been defined by this Court as:

> "... those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head". Kedroff, supra, at 73 S.Ct 151.

The Church in the instant case is organized as a body with other churches having similar faith and doctrine, i.e., the Church of Christ. The ecclesiastical head of the Church is the body of elders for each congregation. (App.40-54). The lack of one ecclesiastical head for all the Churches of Christ, however, does not dictate the denial of relief to the petitioners in this case. On the contrary, the unique facts of this case indicate that the petitioners are just as entitled to the protections of the First Amendment religion clauses as if their

Church were organized along the classic lines of hierarchical orgainization.

The evidence in the lower courts was undisputed that in the Church of Christ the elders are selected by Biblical guidlines, that they are the highest authority in each church and that their right to hold office or their decisions are not subject to question by popular vote of the congregation. (App.40-54).

While counsel for the respondent "argued" that the congregation was a democracy, no evidence to that effect was ever presented to the court. No testimony was taken at the hearings before the trial court and no depositions were filed with the court. The only evidence on the issue of the elders authority and whether voting was allowed or prohibited was the petitioners' sworn

complaint stating that an election was illegal (App.24), and the sworn affidavits of ministers of various Churchs of Christ stating that the elders were the highest church authority and that voting was prohibited in the Church of Christ. (App.40-54).

In Jones v. Wolf, supra, this Court held that, subject to the First Amendment requirements that courts differ to the resolution of issues of religious doctrine or polity to the highest ecclesiastical courts and refrain from resolving disputes on the basis of religious doctrine, the States may adopt neutral principles of law in resolving church property disputes. This Court further held that a presumptive rule of majority representation may be adopted. Florida has no such rule.

In Mills v. Baldwin, 363 So.2d 2 (Fla. 1978), the Florida Supreme Court held that where a majority of the congregation of a local church withdrew from a national religious organization, the ownership of the church property did not transfer to the majority faction, but remained to the minority of the congregation remaining loyal to the national orgaization. This Court in Mills v. Baldwin, 443 U.S. 914, 99 S.Ct. 3105, 61 L.Ed2d 878 (1979), granted certiorari, vacated the judgment and remanded the case to be considered in light of this Court's decision in Jones v. Wolf, supra. On remand, the Florida Supreme Court found its decision not to be inconsistent with Jones vs. Wolf, and reinstated its prior opinion. Mills v. Baldwin, 377 So.2d 971 (Fla. 1979). This Court denied certiorari in Mills v.

Baldwin, 446 U.S. 983, 100 S.Ct. 2964, 64 L.Ed.2d 839. The Florida Supreme Court declined to accept the invitation to adopt a presumptive rule of majority representation extended by Jones v. Wolf.

Clearly, if the Liberty City Church of Christ were subject to a board of elders who governed all of the Churches of Christ in the United States rather than elders for each single church, the above authorites would dictate a result contrary to that reached by the District Court. It is submitted that resolution of the dispute in the instant case should be governed by the same principles.

Resolution of a dispute over chuch property among members of an independent congregation is not appropriately resolved by the will of the majority where, as here, the evidence is uncontroverted that the highest

authority to determine such matters is vested in a body of elders whose decisions are not subject to question by popular vote, and that deciding such matters by voting is prohibited by chuch government. Support for this position is found in the following language of Watson v. Jones, supra:

"The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of tha congregation as a religious society.

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the

property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the aknowledged organism by which the body is governed are entitled to use the property". Watson, supra, at 80 U.S. 724-726, (emphasis supplied).

The Church in the instant case is not the purely independent body spoken of in Watson, supra, above, as it belongs to the body of churches known as the Church of Christ which adhere to the form of church government heretofore described. Even if, however, the Church in question were a totally independent body, the above language in Watson, is support for the position that those persons who recognize the established government of the congregation should be entitled to the use of the property belonging to that conregation.

Additionaly, it should be noted that the church land was given to the petitioners, in trust, for the Church of

Christ. (App.55-56). The rejection of the form of government which the evidence establishes as the only one recognized by the Church of Christ is a sufficiently significant departure from the dedicated use to amount to a violation of that trust. SAee also Watson, supra, 80 U.S. 723-724.

I. CONCLUSION

For the reasons and upon the authorities cited above, the Petition for Certiorari should be granted.

Respectfully submitted,

LISA BENNETT
Counsel for Petitioners
304 Palermo Avenue
Coral Gables,
Florida, 33134
(305) 444-5925

BY:
LISA BENNETT
Counsel for Petitioners

J. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Petition for Writ of Certiorari have been served upon MARK A. VALENTINE, ESQUIRE, 3050 Biscayne Boulevard, Suite 800, Miami, Fl 33137, by depositing in a United States Post Office, Coral Gables, Florida, Branch, with first class postage prepaid, this 11th day of November, 1985.

LISA BENNETT
Counsel for Petitioners

K. APPENDIX

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

The above-entitled cause came on for hearing before Judge Moie J.L. Tendrich, at the Dade County Courthouse, 73 West Flagler Street, Miami, Dade County, Florida, on November 21, 1984, commencing at or about 1:05 o'clock p.m., pursuant to Notice.

....

THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

THE COURT: We are here on summary judgment. Whose motion is this?

Mr. VALENTINE: The Defendant's motion.

THE COURT: Go right ahead.

....

THE COURT: I am anxious to see the briefs that were filed in the Supreme Court and the District Court... From that, I can probably tell you what issues have been adversely decided.

MR. QUINTERO: I think I have mine.

THE COURT: What was the position of the appellant in the District Court. Did you take the position that a Civil Court had no jurisdiction in this matter?

MR. QUINTERO: Let me check, Your Honor.

THE COURT: If that issue was raised adversely to you, I am probably going to grant a summary judfment.

MR. VALENTINE: That's what they argued at the Supreme Court level.

MR. QUINTERO: The only issue that was taken up on appeal was whether the Trial Court abused its discretion in

denying Plaintiffs' request for injunctive relief in the Trial Court's ruling. The fact that the Trial Court's ruling at that time-- It was our position at that time that it was clearly against the weight of the evidence. That was the only issue taken up on appeal.

THE COURT: What did you tell the Supreme Court of the United States? Did you go to the Supreme Court of Florida?

MR. QUINTERO: No. I think it was a per curiam opinion.

THE COURT: What was the question?

MR. QUINTERO: In the Supreme Court, Your Honor, very simply, the issue was the First and Fourteenth Amendments to the United States Constitution, prohibiting the State Court from overriding the decision of the governing board of a non-independent Church and the selection of a Minister, requiring the

religious institution to hold an election of the congregation in order to determine the leadership and the control of the institution and to the Church property.

THE COURT: In view of that, I am going to now enter a summary judgment. I think the issues involved were dicided by the District Court and the Supreme Court of the United States, and I think the law of the case has been established. Give me a summary judgment.

....

MR. QUINTERO: All the Supreme Court did was deny cert on that issue.

THE COURT: I know, sir, but that is the very issue that could have been raised in front of the District Court. It was very simple.

MR. QUINTERO: But they didn't pass on that....

THE COURT: I am going to enter a

summary judgment. I think I have already decided it and I think the only thing left to do is dismiss it. If you want to undertake to prepare an order or if you want to take it up, I will allow you to prepare the order and go over it with counsel. If you want certain findings, I will be glad to do it. ...

....

THE COURT: That now if you want, and as I say I have no objection, you will get an appealable order. Go back out to the District Court or the Supreme Court of Florida or the United States Supreme Court, wherever it is going to go-- **I am specifically again ruling--** I have already ruled one time and I think that I have to be consistent. Now I don't know how you want to draw the order, but I am going to enter a summary final judgment. I don't think hearing testimony is going to do it. ...

IN THE CIRGUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

ORDER

THIS CAUSE having come before this Court on a Verfied Complaint for Injunctive Relief, Declaratory Judgment and Damages by the Plaintiffs/ Counter-Defendant and on a Sworn Counter-Claim for Injunction and Other Relief by Defendant/Counter-Plaintiff, MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST, the Court haveing heard argument of Counsel and being otherwise fully advised,

IT IS ORDERED AND ADJUDGED

(1) The Plaintiffs'/ Counter-Defendant's and Defendant's/ Counter-Plaintiff's request for injunctive relief is hereby DENIED.

(2) That the Plaintiffs/Counter-Defendant are directed to return all funds withdrawn from the LIBERTY CITY CHURCH OF CHRIST checking account and money-market account at COMMERCIAL BANK AND TRUST COMPANY to MINISTER FREEMAN T. WYCHE, on behalf of the LIBERTY CITY CHURCH OF CHRIST. MINISTER WYCHE is hereby directed to deposit said funds into the CHURCH'S account at CAPITAL BANK and to maintain an accounting of the same. The action herein should take place immediately. The CHURCH is further directed to expend said funds for those purposes and activities directly attributable to its operation.

Attorney's fees and legal expenses are not to be paid out of said funds until further ordered by this Court.

(3) It is further ordered that the CHURCH schedule a meeting of eligible members of the LIBERTY CITY CHURCH OF CHRIST. Said meeting shall include, but not be limited to, the following issues:

(a) Which individual(s) shall continue to serve as elders of the CHURCH.

(b) Which individual(s) shall serve as minister of the CHURCH.

That said meeting shall be noticed by mail or posted notice. Said notice should include, but not be limited to, time, date, location and purpose of meeting. The minutes of said meeting shall be recorded by a legal stenographer (i.e. Court Reporter).

(4) Supersedeas bonds are hereby

DENIED.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 6th day of April, 1983.

/s/MOIE J.L. TENDRICH
CIRCUIT COURT JUDGE

Copies furnished to:

Commercial Bank and Trust Co.
Ellis Rubin, Esq.
R.V. Walker
Mark A. Valentine, Esq.

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEARING
MOTIONS AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A. D. 1983

CASE NO.: 83-926

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

BROTHER FREEMAN T. WYCHE,

Appellee.

Opinion filed October 11, 1983.

An Appeal from a non-final order from the Circuit Court for Dade County,

Moie J. Tendrich, Judge.

Ellis Rubin and Laurie Bernstein, for appellants.

McCrary, Valentine & Handfield, and Mark Valentine, for appellee.

Before SCHWARTZ, C. J. and HENDRY and FERGUSON, JJ.

PER CURIAM.

Affirmed.

SUPREME COURT OF THE UNITED STATES

NO. 83-1434

MOSES WILLIAMS and MANNIE BLACK,

vs.

FREEMAN T. WYCHE

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

April 23, 1984

SUPREME COURT OF THE UNITED STATES

NO. A-203

MANNIE BLACK AND MOSES WILLIAMS,
Applicants,

vs.

FREEMAN T. WYCHE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certioratri in the above-entitled cause be, and the same is hereby, extended to and including November 11, 1985.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the United
States

Dated this 16th

day of September, 1985.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

SUMMARY FINAL JUDGMENT

THIS CAUSE having come before this Court on the Defendant's/Counter Plaintiff's Motion for Summary Judgment and Amendment to Motion for Summary Judgment, Plaintiffs/Counter Defendants Motion and Memorandum of Law Regarding Motion for Summary Judgment, the court having heard argument of respective counsel, and reviewed the Motions of the respective parties and the court being otherwise fully advised, it is

ORDERED and ADJUDGED as follows:

(1) That following the Court's injunction Hearing on April 5, 1983, the Court ordered that the LIBERTY CITY CHURCH OF CHRIST membership conduct a meeting to determine the continued status of MINISTER WYCHE as Minister and the status of BLACK and WILLIAMS as Elders.

(2) The "Court Ordered Meeting" was held on or about March 28, 1983 and MINISTER WYCHE'S position as Minister was confirmed by a majority vote, while BLACK and WILLIAMS were dismissed as Elders by a majority vote.

(3) That MINISTER FREEMAN T. WYCHE is the Minister of the LIBERTY CITY CHURCH OF CHRIST.

(4) That MANNIE BLACK and MOSES WILLIAMS are no longer Elders of the LIBERTY CITY CHURCH OF CHRIST.

(5) That MINISTER FREEMAN T. WYCHE and family are in legal possession of the church owned property currently in their possession and in their possession at the time of action herein was commenced to wit: real property at 1263 N.W. 67th Street, Miami, Florida and 2406 N.W. 67th Street, Miami, Florida.

(6) That the Verified Complaint for Injunctive Relief, Declaratory Judgment and Damages filed by the Plaintiff's MOSES WILLIAMS and MANNIE BLACK is hereby dismissed with prejudice.

DONE and ORDERED in Chambers in Miami, Dade County, Florida this 28 day of November, 1984.

/s/MOIE J.L. TENDRICH
CIRCUIT COURT JUDGE

Copies furnished to:

Mark A. Valentine, Esq.
Ellis Rubin, Esq.

NOT FINAL UNTIL TIME
EXPIRES TO FILE REHEARING
MOTIONS AND, IF FILED,
DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, 1985

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

MINISTER FREEMAN T. WYCHE,

Appellee.

Opinion filed June 11, 1985.

An Appeal from the Circuit Court for Dade County, Moie J.L. Tendrich, Judge.

Ellis Rubin and Laurie Bernstein, for appellants.

McCrary & Valentine and Mark A. Valentine, for appellee.

Before SCHWARTZ, C.J., and BASKIN and DANIEL S. PEARSON, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

MOSES WILLIAMS and MANNIE BLACK,

Plaintiffs,

vs.

BROTHER FREEMAN T. WYCHE,

Defendant.

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT AND DAMAGES

COMES NOW, the Plaintiffs, MOSES WILLIAMS and MANNIE BLACK, by and through their undersigned attorney and sue the Defendant, BROTHER FREEMAN T. WYCHE and for cause say as follows:

COUNT I

1. That this is an action for injunctive relief.

2. That all times material herein, Plaintiffs, MOSES WILLIAMS and MANNIE BLACK were and are residents of Dade County, over the age of 18 years and sui juris.

3. That at all times material herein, Defendant BROTHER FREEMAN T. WYCHE was and is a resident of Dade County, over the age of 18 years and sui juris.

4. That the real property referred to herein is located at 1263 N. W. 67th Street, Miami, Florida and known as the Liberty City Church of Christ; 2406 N. W. 67th Street, Miami, Florida and a parcel of real property located at 17th Avenue and 83rd Street, Miami, Florida.

5. That all the acts and/or omissions complained of herein occurred within Dade County, Florida.

6. That at all times material herein, Plaintiffs, MOSES WILLIAMS and MANNIE BLACK were employed and held the position as elders of the aforesaid Liberty City Church of Christ, Inc., for the past 30 years and at all times material herein, acted within the course and scope of their employment as the elders.

7. That on or about 1979, Plaintiffs and Defendant orally agreed to designate Defendant as Minisster of the aforesaid Liberty City Church of Christ, Inc. That pursuant to the terms of this agreement Defendant was to abide by the Church's scriptures and tenets, and the authority of the elders.

8. That at all times material herein, and pursuant to this employment

arrangement, Defendant received $550.00 per week salary, Defendant's wife received $75.00 per week for secretarial duties. Defendant received living quarters adjacent to the church and utilitites within these premises, to be paid by the church.

9. Futher, the parties agreed that in the event Defendant failed to perform his duties satisfactorily, Defendant's employment would be terminated by the elders upon three months notice, with salary continuing throughout this 90-day period.

10. That Plaintiffs complied with all conditions precedent to be performed under the terms of the agreement.

11. That on or about March 6, 1983 and after lengthy deliberations, Plaintiffs presented Defendant with a letter requesting that Defendant's employment be terminated due to unsatisfactory performance of Defendant's duties, a copy of which is attached hereto as Exhibit A.

12. That Plaintiffs provided Defendant with the required 90-day termination notice.

13. That on or about March 7, 1983, contrary to the church's doctrine, Defendant organized a meeting calling for the dismissal of the church's elders.

14. That at the aforesaid meeting

of the church, pursuant to Defendant's initiation an "illegal" vote was held, contrary to the church's doctrine, at which the elders were expelled from retaining their position at the aforesaid church.

15. That shortly thereafter, Defendant established himself as Minister of the church, removed the eldership of the church, and changed the locks of the church door; thereby rendering the church impassable by the elders and members having keys.

16. That Defendant continues to reside on the church property.

17. Further, that Defendant's daughter continues to reside at the parsonage, this being church property located at 2406 N. W. 67th Street, Miami,

Florida.

18. That the aforesaid church is the sole owner of the real property in question and record title owner of same.

19. That Defendant has no proprietary interest in and to said real property.

20. That Plaintiffs have on divers occasions spoken with Defendant and requested that Defendant return the church's property including but not limited to church buildings, furnishings, valuable paintings located within the church, and Sunday morning collections, and Defendant has neglected, failed and/or refused to do so.

21. That Defendant has refused to relinquish his post and continues to act as the Minister in defiance of the orders

of the elders, this defiance being open and notorious.

22. That Plaintiffs as elders of the aforesaid church had the power and authority to handle the financial affairs of the aforesaid church and to sign on the church's account. That by and through this authority Plaintiffs transferred the church's account, pursuant to advice of counsel, and pending the court's decision regarding this matter.

23. That unless an injunction is granted by the court herein, enjoining Defendant from operating as a Minister of the Liberty City Church of Christ, said Defendant will irreparably injure and damage the spiritual and financial well-being of the Liberty City Church.

24. Further, that said injunction is necessary to prevent Defendant from secreting, hypothecating or disposing of said church's property.

25. That Plaintiffs have no other adequate remedy at law to restrain the actions of the Defendant and to protect their property except in this Court of equity.

26. Further that Defendant's actions have caused the dis-association and severance of members of the church,

which practices are against the concepts and tenets of the church.

WHEREFORE, Plaintiffs move this Honorable Court for an order as follows:

1. That this Court has jurisdiction over the subject matter and parties herein.

2. That this Court grant Plaintiffs injunctive relief against Defendant.

3. That this Court enjoin Defendant from continuing in his position as Minister of the Liberty City Church of Christ.

4. That this Court require and order Defendant to vacate the real property as aforesaid.

5. That this Court enjoin Defendant from secreting, hypothecating

and/or disposing of all church property both temporarily and permanently.

6. Such other and further relief as this Court deems just and appropriate under the circumstances.

COUNT II

27. That this is an action for declaratory judgment.

28. That Plaintiffs reaver and reallege each and every allegation set forth in Counts 1 through and inlcuding 26 of this complaint.

29. That at all times material herein the aforesaid Liberty City Church of Christ is the true and legal title owner of certain property located at 1263 N. W. 67th Street, Miami, Florida.

30. That Defendant took possession of said property and other property

belonging to the aforesaid church and refused to vacate the said property, and/or return the church's property.

31. That Plaintiffs as elders of the aforesaid church have brought this action fearing irreparable harm and injury to the aforesaid church and dis-association and severance among its members.

32. That Plaintiffs are in doubt as to the effect of and their rights and would ask this Honorable Court for a determination of these rights; the equities favor the Plaintiffs and are against the Defendant.

33. That Plaintiffs have no adequate remedy at law to restrian the action of Defendant and to protect their property except in this Court of equity.

WHEREFORE, Plaintiffs move this Honorable Court for an order as follows:

1. That this Court has subject matter jurisdiction over the parties.

2. That Court determines the rights, duties and status of Plaintiffs.

3. That this Court enjoin Defendant from continuing in his position as Minister of the Liberty City Church of Christ.

4. That this Court require and order Defendant to vacate the real property as aforesaid.

5. That this Court enjoin Defendant from secreting, hypothecating

and/or disposing of all church property.

6. That this Court determine the rights of Plaintiffs regarding control of the church's financial matters, and retention of the church's bank accounts.

7. Such other and further relief as this Court deems just and appropriate under the circumstances, and/or in the alternative,

COUNT III

34. That this is an action for conversion.

35. That this is an action in which damages exceed $5,000.

36. That Plaintiffs reaver and reallege each and every allegation contained in paragraphs 1 through and including 33 of this Complaint.

37. That at all times material herein, Plaintiffs were and are the elders of the Liberty City Church of Christ, and at all times material herein acted within the scope and capacity of their employment as the elders.

38. That according to the tenet of the aforesaid Church, Plaintiffs had the duty to appoint a Minister to preside over the aforesaid Church.

39. That Plaintiffs' duties included dismissing the Minister in the event he performed his duties unsatisfactorily.

40. That Defendant acting as Minister of the aforesaid Church failed to perform his duties satisfactorily and was thereby dismissed from his employment at the Church on or about early March of 1983.

41. That Defendant was requested to leave the adjacent living quarters which were provided to Defendant for his use only in his capacity as Minister.

42. That Defendant unlawfully, maliciously and wantonly changed the locks on the Church building, thereby converting to his own use the aforesaid Church building and residence.

43. That Defendant had unlawfully converted to his own use the contents of the Church building, the living quarters adjacent to the Church building, Sunday morning collection monies and other Church properties.

44. That Plaintiffs have protested the removal of the Church property, but Defendant has neglected, failed and/or refused to return said property to the

congregation.

45. That as a direct and proximate result of the wrongful acts of Defendant, Plaintiffs have been deprived of their position as elders of the Church; the Church's property including Church buildings, bank accounts, valuable paintings and Sunday morning collection moies have been retained by Defendant, the Church members have become dis-associated and, in addition, Defendant has prevented members from entering onto the Church premises due to a new lock.

WHEREFORE, Plaintiffs MANNIE BLACK and MOSES WILLIAMS, by and through their undersigned attorney sue the Defendant for damages in excess of $5,000, for costs interest and any and all other relief which this Court deems just and

appropriate and demands trial by Judge or

all issues triable by Judge.

ELLIS RUBIN LAW OFFICES, P. A.
Attorneys for Plaintiffs
265 N. E. 26th Terrace
Miami, Florida 33137
(305) 576-5600

BY: /s/ ELLIS S. RUBIN
Ellis S. Rubin, Esquire

/s/ Mannie Black
MANNIE BLACK

/s/ MOSES WILLIAMS
MOSES WILLIAMS

STATE OF FLORIDA)
)SS
COUNTY OF DADE)

BEFORE ME the undersigned authority, personally appeared, MANNIE BLACK and MOSES WILLIAMS who after being duly sworn deposes and states that the foregoing is true and correct.

/s/ Patricia R. Rand
NOTARY PUBLIC
State of Florida
March 31, 1983

My commission expires:

Notary Public State of Florida
at Large My Commission Expires
Apr. 19, 1984 Bonded thru General
Ins. Underwriters

Miami, Florida

February 27, 1983

Bro. Freeman T. Wyche
1295 N. W. 67th Street
Miami, Florida

Re: Freeman T. Wyche

Dear Bro. Wyche:

We the elders of the Liberty City Church of Christ, met on February twenty-third, (23rd) 1983. And at that time decided that your services as minister of this congregation would no longer be desired, and that, as of March 1st, 1983, you are hereby given three months notice, (until May 31st) to relocate your residency.

It was further agreed, that we will continue your present salary, as is, until May 31st 1983, and at that time, your ser-

vices here at the, Liberty City Church of Christ will be terminated.

Sincerely, the elders of L.C.C.C.

/s/ Moses Williams
Moses Williams

/s/ Mannie Black
Mannie Black

/s/ Henderson Beasley
Henderson Beasley

MW/MB/HB.

:paj

AFFIDAVIT

Re. case #83-114-27: in the matter of the Liberty City Church of Christ

1. Explanation of church government

Each church of Christ is governed by elders or bishops at the local congregational level (1 Timothy 3:1-7 and Titus 1:5-16). Deacons are the only other class of church officers (I Timothy 3:8-13). Ministers, teachers and all other members serve under the authority of the elders (1I Timothy 4:5).

Since the sacred scriptures do not grant scriptural authority to any persons other than elders, a church of Christ does not grant any authority to any other person or group of persons.

2. Authority of elders, ministers and other officers

Churches of Christ have no officers other than elders and deacons as

set forth in I Timothy 3 and Titus 1. Evangelists, preachers or ministers are not officers of the church, for they are not required to meet specific qualifications. They serve at the direction of the elders, who set the terms and conditions of employment, dates of initial and final dates of employment. Regardless of whatever input they may receive, it is up to the elders to decide what to do regarding the employment status of evangelists, preachers, ministers.

3. Church property

The elders, as God's authority in each local congregation, extend their authoritly into all matters, including church property. They sign for it at the time of purchase, sale or any other change of the legal status of the property.

4. Voting

Where elders oversee a given congregation, there is no occasion for voting. For to do so could set at naught the authority of the elders. Members usually voice their opinions at business meeetings called by the elders or approach the elders in private.

5. History, customs, doctrine

"All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness; that the man of God may be perfect, thoroughly furnished unto all good works." (II Timothy 3:16-17)

With the establishment of the church of Christ in 33 A.D. on the Day of Pentecost (Acts 2), all inspired scripture was being completed within that century. No new customs, creeds or

traditions have been made or recognized.

/s/ O. L. Lamar
Minister
Magnolia Park church of Chri
Opa Locka, Florida

/s/_____
Notary Public

I certify that this letter was signed in my presence by O.L. Lamar personally known to me.

Notary Public, State of Florida at Large

My Commission Expires March 9, 1985

Bonded thru Maynard Bonding Agency

AFFIDAVIT

In the matter of the Liberty City church of Christ: Case #83-114-27

1. Explanation of church government

Churches of Christ are governed by bishops or elders of each local congregation. (See I Timothy 3:1-7; Titus 1:5-16). Serving under the elders are the deacons and all other members. (1 Tim. 3:8-13). Deacons are usually appointed to specific church functions by the elders. (Acts 6:3). Others may be assigned to specific functions, including ministry/ evangelism.

We believe that where the scriptures are silent, we must be silent. Thus, because there is no mention of higher ecclesiastical authority, churches of Christ function without these. A few small congregations have functioned without elders for a time, but the desire

is always to have elders to oversee the flock. (Titus 1:5).

II. Authority of elders/ ministers/ deacons/ other officers

From a scriptural standpoint there are no officers of the church other than elders and deacons as cited in 1 Tim. 3 and Titus 1. Ministers are servants assigned to carry out functions at the discretion of the elders, who, if the minister/evangelist is a salaried employee, may employ and terminate, at their discretion. it is their judgment and only their final decision as to the conditions of the evangelist/minister. Elders are regarded scripturally as the"rulers" in God's house. (1 Tim. 3:4-5).

III. Church property

The elders, as God's authority in the church, sign for the legal documents

of all church property. They remain in positions of authority that may not be compromised while they serve. Only in the absence of elders serving in a local congregation would there be any occasion for doing otherwise. Elders sign for property because they are God's authority in all matters--including matters of property.

IV. Voting

Having been a member of the chuch of Christ for 40 years, and having served as minister/ evangelist/ deacon in a number of different congregations, I have never, while serving under elders, voted on any matter in a meeting where the elders were being challenged. Even "straw votes" have been rejected as pressure tactics that could undermine the God-given authority of elders.

V. History/customs/doctines

Churches of Christ believe that the church was established in 33 A.D. on the day of the Pentecost when the apostle Peter preached the first sermon. (Acts 2). Inspired scriptures written during the first century are, we believe, the only source of Biblical authority in church matters. We recognize no doctrine, creed or tradition of men as having any weight. (II Tim. 3:15). There is no need for any other because by it the man of God is thoroughly funished unto all good works. (1I Tim. 3:17).

/s/ George M. Brown, Ph.D.
Church of Christ Minister
Hialeah, Florida

SWORN TO AND SUBSCRIBED before me this 13th day of November, 1984

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA MY COMMISSIONEXP. FEB. 23, 1988 BONDED THRU GENERAL INS. UND. /s/ Notary Public

AFFIDAVIT

November 5, 1984

THE ORGANIZATION OF THE CHURCH OF CHRIST

The Churches of Christ have no head-quarters on earth. Each congregation is autonomous, and no congregation is over or dictates to another congregation. Each congregation selects its own Elders to Oversee (Rule and Govern) the flock as is suggested in Acts 14:23, Acts 20:28, Heb. 13:7, 1 Tim 3:5.

Elders Rule The Church (1 Tim. 5:17) Deacons, Preachers, and members work under the oversight of the Eldrs. The latter do not have authority equal to or superior to the elders.

There is no earthly authority superior to the Elders of the Local Church.

Minister,

/s/ LaRue Stocker

NOTARIZATION

/s/ Wm. B. King

Seal and Signature of Notary Public

NOTARY PUBLIC STATE OF FLORIDA MY COMMISSION EXPIRES APR. 9, 1986 BONDED THRU GENERAL INS. UNDERWRITERS

AFFIDAVIT

To Whom It May Concen:

....

....

The Elders then are responsible for seeing that the church runs smoothly, the flock is cared for, the money is handled correctly and that the gospel is preached. (Jas. 5:14) (1 Tim. 5:17-18) (1 Pet. 5:1-4). We believe that it is impossible to remove an Elder from office without a scriptual reason. When there is scriptual reason, the removal must be done according to bible guidelines and not be a popular vote. (Matt. 18:15-17) (1 Tim. 5:19-20). No one can be voted in or out of office in the Lord's Church because he has already set guidelines as to how each office is filled and terminated. Everythilng must be done according to scripture. Hopefully this

will make clear, the way the Church of Christ is organized.

I have been preaching for 30 years. The last 5 years at Coconut Grove.

Respectfully,

/s/ A.B. Alford

Evang. A.B. Alford

Coconut Grove Church of Christ

3345 Douglas Rd.

Coconut Grove, Fla. 33133

/s/ Olivia L. Edwards

Notary Public

AFFIDAVIT

Elders

The Church of Christ are an organized body of Bible believing Christians who accept no other guide or rule book. The Bible is our guide for all religious matters. No person or group within the Churches of Christ can exercise authority over that which is written in the Bible.

The church of Christ was established on Pentacost in the city of Jerusalem. Our organized history dates back to Acts chapter two of the New Testament.

Organized congrgations had elders or bishops and their responsibility was and is to look after the spiritual welfare of the members. Their sphere of work is confined to one congregation, the one whlich selected them.

Men who hold the position of elder in the church must be men who are unusually well qualified. These qualifications are recorded in 1 Timothy chapter three, verses one through seven, and Titus, chapter one, verses five throught nine. All requirements must be met. Once a man is appointed to this position, there are no scriptural grounds for his removal unless, at some time in the future he fails to continue to meet the scriptural qualifications.

If and when an elder sins he is not automatically disqualified from serving in that position. If he sins and refuses to seek forgiveness of his sins, he then disqualifies himself from that position. Reference should be taken of 1 Timothy, chapter five, verses nineteen and twenty.

Voting an elder out of his position is not Biblical and is not practiced in churches of Christ as seen from the reference text given.

....

/s/ Joseph H. Brown

(Minister Church of Christ, Richmond, Virgini

Subscribed and sworn beforem me this 8th day of Novmber, 1984.

/s/ Sandy L. Balducci

My Commission Expires June 7, 1983

EXCERPT FROM WARRANTY DEED

BOOK 3963 PAGE 50

WARRANTY DEED

THIS INDENTURE, Made this 23rd day of August, A.D. 1954.

BETWEEN FRANCES HARGREAVES LANCASTER, an unmarried woman,

of the County of Dade, in the State of Florida, party of the first part, and BOOGAN JAKE BLACK, MANNIE BLACK and MOSES WILLIAMS, as Trustees for the CHURCH OF CHRIST, located at 1236 N.W. 67th Street, of the County of Dade, in the State of Florida, parties of the second part.

Witnesseth, that she said party of the first part, for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALULABLE CONSIDERATIONS to her in hand paid by the parties of the second part, the receipt whereof is hereby

acknowledged, has granted, bargained and sold to the parties of the second part, their heirs and assigns, forever, the following described land situate, lying and being in the County of Dade and State of Florida, to-wit:

....

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NUMBER: 83-11427(12)

MANNIE BLACK, et al.
Plaintiffs/
Counter/Defendants,

vs.

FREEMAN T. WYCHE,
Defendant,
Counter/Plaintiff.
_____/

MOTION AND MEMORANDUM OF LAW REGARDING

MOTION FOR SUMMARY JUDGMENT

Plaintiffs/Counter-Defendants, by and through undersigned counsel, hereby file this Memorandum of Law in Opposition to Defendant/Counter-Plaintiff's Motion for Summary Judgment and state as follows:

I. STATEMENT OF FACTS

....

II. ARGUMENT

It has been clearly established that where the dispute involves a

hierarchical church or organized body of churches of a similar fiath and subject to an established ecclesiastical authority, the state courts must defer to the hierachical authority. Watson v. Jones, 80 U.S. 679 (1872); Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1920); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Presbyterian Church v. Mary Elizabeth Blue Hall Memorial Presbyterian Church, 393 U.S. 440 (1969); Kreskik v. St. Nicholas Cathedral, 363 U.S. 190 (1960); Serbian Eastern Orthodox Church v. Milirojevich, 426 U.S. 969 (1976); Jones v. Wolf, 443 U.S. 595 (1979).

The ruling of the ecclesiastical authority must be enforced by the civil courts. ID. The highest ecclesiastical authority, or assembly in some religions or clerical superiors in others, is the

final arbiter of church doctrine and authority. In the instant case, the elders of each congregation are the ecclesiastical authority, and thus civil courts are required to uphold the authority of this rule making body.

....

Defendant/Counter-Plaintiff states that absent a trust of church assets, the assets belong to the majority and are subject to its control. Defendant further asserts that there is no trust in this case. This is totally incorrect. The church's real property was deeded to Plaintiffs as trustees for the Church of Christ. (See Exhibit A). Plaintiffs are the subcribers to the non-profit corporation, Church of Christ. (See Exhibit B). Although no formal trust agreement in writing exists, it should be noted that a trust may be created by deed

or may rest entirely in parol or may be partially in writing and partially in parol. In Re Craffs Estate, 320 So.2d 874 (Fla. 4th DCA 1975), Fraser v. Lewis, 187 So.2d 684 (Fla. 3rd DCA 1966).

All the evidence shows that the Church of Christ is operated and maintained by the elders. The elders have complete authority to make any decisions concerning the Church of Christ since they founded it and since they are the trustees fosr the church.

....

Respectfully submitted,

ELLIS RUBIN LAW OFFICES, P.A.

Attorneys for Plaintiffs

....

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

CASE NO: 84-2800

MANNIE BLACK and
MOSES WILLIAMS,

Appellants,

vs.

MINISTER FREEMAN T. WYCHE,

Appellee.

Excerpt from brief of Petitioners:

Plaintiffs/appellants, as the ecclesiastical authority of the Liberty City Church of Christ, are entitled to have their rulings enforced by the civil courts.

....

It has been clearly established that where the dispute involves a hierarchical church or organized body of churches of a similar faith and subject to an established ecclesiastical

authority, the state courts must defer to the hierarchical authority and the rulings of the ecclesiastical authority must be enforced by the civil courts.